FILE COPY

Office - Supreme Court, U. S.
FILED
NOV 29 1946
CHARLES ELMORE CROPLEY
CLERK

No. 514

In the Supreme Court of the United States

OCTOBER TERM, 1946

THE UNITED STATES OF AMERICA

v.

MARIA R. LAURO, AS ADMINISTRATRIX OF THE GOODS, CHATTELS AND CREDITS OF PETER LAURO, DECEASED

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

INDEX

	Page
Opinion below	1
Jurisdiction	1
Question presented	2
Statute involved	2
Statement	2
Discussion	4

CITATIONS

Cases:	
American Stevedores, Inc. v. *Porello et al.*, No. 69 this Term	4
Beta, The (1869), L. R. 2 P. C. 447	5
Canadian Aviator, Ltd. v. *United States*, 324 U. S. 215	6
Kwasind, The (1915), 84 L. J. P. 102	5
Mulvey v. *The Neosho* (1919), 19 Ex. C. R. 1	5
New England Maritime Co. v. *United States*, 55 F. 2d 674	6
Pennsylvania Lumbermen's Mutual Fire Ins. Co. v. *Meyer*, 197 U. S. 407	3
Ruckers, The (1801), 4 Ch. Rob. 73, 165 Eng. Reprint 539	5
Sylph., The (1867), L. R. 2 Adm. & Ecl. 24	5
Theta, The [1894], P. 280	5
Thomas v. *Lane*, 23 Fed. Cas. No. 13,902	5
Vera Cruz, The [1884], L. R. 9 P. 96, affirmed (1884) L. R. 10 A. C. 59	5
Wyman v. *The Duart Castle* (1899), 6 Ex. C. R. 387	5
Federal and State Statutes:	
Public Vessels Act of 1925, 43 Stat. 1112, 46 U. S. C. § 781	2, 3
N. Y. Decedent Estate Law, Secs. 130 to 134	2
English Statutes:	
Admiralty Courts Jurisdiction Act, 1861 (24 Vict. c. 10) Section 7	4
Maritime Conventions Act, 1911 (1 & 2 Geo. V, c. 57) Section 5	5
Vice Admiralty Courts Act, 1863 (26 Vict. c. 24) Section 10	4
Miscellaneous:	
Benedict, *Admiralty*, 4th ed., Albany 1910, pp. 590, 592	5
Conkling, *Admiralty*, Albany 1848, p. 867	5
Dunlap, *Practice*, Philadelphia 1836, pp. 426, 433	5
Pugh, *Forms*, 2d ed., Philadelphia 1903, p. 31	5

721375—46

In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 514

THE UNITED STATES OF AMERICA

v.

MARIA R. LAURO, AS ADMINISTRATRIX OF THE GOODS, CHATTELS AND CREDITS OF PETER LAURO, DECEASED

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES

OPINION BELOW

The opinion of the District Court is reported in 63 F. Supp. 538. The United States Circuit Court of Appeals for the Second Circuit has rendered no opinion.

JURISDICTION

The certificate of the United States Circuit Court of Appeals for the Second Circuit was filed September 17, 1946. The jurisdiction of this Court is invoked under Section 239 of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

The question certified by the court below reads as follows:

> Does the word "damages," as it appears in the following sentence of the Public Vessels Act of 1925; 46 U. S. C. § 781: "A libel in personam in admiralty may be brought against the United States, or a petition impleading the United States, for damages caused by a public vessel of the United States, and for compensation for towage and salvage services, including contract salvage, rendered to a public vessel of the United States: *Provided*, That the cause of action arose after the 6th day of April, 1920."
>
> mean damages to property only, or does it mean, as well, damages under Sections 130 to 134 of the Decedent Estate Law of the State of New York recoverable by a personal representative because of the death of a human being?

STATUTE INVOLVED

So far as pertinent, the statute involved is set forth in the question certified.

STATEMENT

The facts as set forth in the certificate are as follows:

On May 27, 1943, Peter Lauro died as a result of injuries suffered by him on May 26, 1943, while he was employed by Marra Bros., contracting stevedores, on board the Government's vessel, designated as No. 596, which vessel was docked at Pier 4, Staten Island, New York. The death was

caused by personal injuries suffered by Lauro when he fell from a hatch cover on the vessel's main deck into the hold.[1] At the time of the accident, the vessel, No. 596, was owned by the United States of America and had been allocated to the United States Army. It was being loaded with cargo which was owned by the United States, and which consisted of Army and Navy property and lend-lease material which was being shipped to North Africa. Marra Bros., the employer of the deceased, was hired by the United States Army to load the vessel.

Thereafter, Lauro's widow filed a libel in the United States District Court for the Eastern District of New York against the United States of America to recover damages under the Public Vessels Act of 1925; 46 U. S. C. Section 781, for wrongfully causing Lauro's death. In this proceeding the District Court rendered a decree awarding damages to the libelant in the sum of $25,000. From this decree an appeal was taken

[1] It is not understood that the certificate is intended to raise any question of liability in the absence of unseaworthiness. That Lauro fell as a result of slipping on an oil spot on the hatch cover is common ground and was found as a fact by the district court (63 F. Supp. at 539). This Court has held that the parties may by stipulation on the argument amend a certificate to include a material fact contained in the record before the court below but which is not stated in the certificate (*Pennsylvania Lumbermen's Mutual Fire Ins. Co.* v. *Meyer*, 197 U. S. 407, 412), and it would appear to follow that a fact, conceded by the parties, may be considered, if necessary, in resolving the question certified.

to the court below and the cause came on for argument on March 12, 1946. On this appeal, the respondent-appellant contended that the said Public Vessels Act of 1925 provided a remedy against the United States for damage to property only, but not for damage to a person or damage arising by reason of the death of a human being.

DISCUSSION

It would appear that the action of the court below in submitting the question certified stems from its desire to be instructed whether, assuming that this Court holds in *American Stevedores, Inc.*, v. *Porello et al.*, No. 69, this Term, that "damages caused by a public vessel" extends to damages by personal injury as well as damages to property, the clause will also include damages for wrongful death recoverable under the New York statute similar to Lord Campbell's Act.

This question appears to be raised by the circumstance that the British courts have drawn such a distinction in construing the somewhat similar language of Section 7 of the Admiralty Courts Jurisdiction Act, 1861 (24 Vict. c. 10), and Section 10 of the Vice Admiralty Courts Act, 1863 (26 Vict. c. 24), which grant courts of admiralty and vice admiralty jurisdiction of "any claim for damage done by any ship." Under that language, it has long been settled that damage by personal injury done by the ship itself is damage

within the Act,[2] *The Sylph* (1867), L. R. 2 Adm. & Ecl. 24; *The Beta* (1869), L. R. 2 P. C. 447; *Wyman* v. *The Duart Castle* (1899), 6 Ex. C. R. 387. But damage by personal injury, not done by the ship or a part thereof as a physical instrument, is held not to be within the Act. *The Theta* [1894], P. 280; *Mulvey* v. *The Neosho* (1919), 19 Ex. C. R. 1. Similarly, actions under Lord Campbell's Act by dependents seeking to recover damage by wrongful death are held not to be claims for damage within the Act. *The Vera Cruz* (1884), L. R. 9 P. 96, affirmed (1884) L. R. 10 A. C. 59. In such cases, said Brett, M. R., "The real cause of action is in fact pecuniary loss *caused* to these persons, it is not a cause of action for anything *done* by a ship, which is only one ingredient in the right of action."[3]. [Italics supplied.]

[2] Indeed, in the admiralty a suit for personal injury is what is technically called "a cause of damage." Story, J., in *Thomas* v. *Lane* (D. Me., 1813), 23 Fed. Cas. No. 13,902, p. 958; Lord Stowell in *The Ruckers* (1801), 4 Ch. Rob. 73, 165 Eng. Reprint 539. Early American precedent books invariably characterize such suits in the introduction of the libel as "a cause of damage, civil and maritime," Benedict, *Admiralty*, 4th ed., Albany 1910, pp. 590, 592; Conkling, *Admiralty*, Albany 1848, p. 867; Dunlap, *Practice*, Philadelphia 1836, pp. 426, 433; Pugh, *Forms*, 2d ed., Philadelphia 1903, p. 31.

[3] The distinction has in effect been rendered immaterial by the enactment of Section 5 of the Maritime Conventions Act, 1911 (1 & 2 Geo. V, c. 57), which permits an action *in rem* to be brought in the admiralty for wrongful death although it is not an admiralty proceeding. *The Kwasind* (1915), 84 L. J. P. 102. A contention, involving a somewhat similar

We do not contend for any such artificial rule. The broader language of the Public Vessels Act is not confined to *damage done* but is extended to all *damages caused* by public vessels, thereby removing the difficulty of the British courts. Furthermore, the decision of this Court in *Canadian Aviator, Ltd.* v. *United States,* 324 U. S. 215, 224, rejected the contention that the Public Vessels Act is confined to damage done by the ship as a physical instrument and holds that it extends to all damage regardless of physical contact. It is our position that this Court's decision in the *Porello* case should be fully dispositive of the question which has been certified by the court below.

Accordingly, we do not regard it as necessary for the purposes of this case to add to the arguments presented in the briefs which are being filed in that case.

Respectfully submitted.

GEORGE T. WASHINGTON,
Acting Solicitor General.

NOVEMBER 1946.

---

distinction in respect of the Public Vessels Act, was rejected in *New England Maritime Co.* v. *United States,* 55 F. 2d 674, 685 (C. C. A. 1).

U. S. GOVERNMENT PRINTING OFFICE: 1946